

# **EXHIBIT “A”**

 **ORIGINAL**

1 UNITED STATES DISTRICT COURT  
2 FOR THE DISTRICT OF NEW JERSEY  
3 CASE NO. 2:10-cv-05108 (DMC) (JAD)

4 JACKSON HEWITT, INC., :

5 Plaintiff, :

6 vs. :

7 BARNES ENTERPRISES, INC. :

8 AND RICHARD S. BARNES, :

9 Defendants. :  
10

11 - - -  
Tuesday, June 26, 2012  
12 - - -

13 Oral deposition of CYNTHIA B. DAVIS,  
14 held at the Law Offices of TURNER, PADGET, GRAHAM &  
15 LANEY, P.A., 1901 Main Street, 17th Floor, Columbia,  
16 South Carolina, commencing at 1:51 p.m. on the  
17 above date, before Angela D. Zuver, Court Reporter  
18 and Notary Public in and for the State of South  
19 Carolina.  
20  
21  
22

23 LOVE COURT REPORTING, INC.  
1500 Market Street  
24 12th Floor, East Tower  
Philadelphia, Pennsylvania 19102  
25 (215) 568-5599

Cynthia B. Davis

1           A.    To the best of my knowledge. We were  
2 in the bank and he told her to go ahead and sign  
3 it, she's part of Barnes Enterprises. And I  
4 believe it is the Shaw, but this is just to the  
5 best of my memory.

6           Q.    And when you say to the best of your  
7 memory, this was at a closing of some sort at a  
8 bank associated with those transactions?

9           A.    Correct.

10          Q.    And you were present?

11          A.    Correct.

12          Q.    You mentioned just a moment ago that a  
13 number of people who are employees of Customers  
14 First had told you that Scott Barnes and Kristi  
15 Barnes were the owners of Customers First; is that  
16 accurate?

17          A.    Correct.

18          Q.    Do I understand that correctly?

19          A.    Correct.

20          Q.    Other than that do you have any other  
21 information about the ownership structure of  
22 Customers First?

23          A.    Absolutely not.

24          Q.    Are you aware of whether Richard Barnes  
25 has any responsibilities with Customers First?

Cynthia B. Davis

1           A.     January 2011, after I had contacted  
2 them concerning Richard invading my territory and  
3 using my offices with Jackson Hewitt signs and I  
4 contacted them.

5           Q.     So in January 2011, when you said  
6 Richard invaded your territory, can you describe  
7 what you mean by that?

8           A.     Yes. He had -- the Shaw office did not  
9 have any signage other than the Customers First. I  
10 did go in there and the employee did say that -- I  
11 said, is this Jackson Hewitt? They said, no.  
12 There is no Jackson Hewitt. We're the new Jackson  
13 Hewitt. We're affiliated with Jackson Hewitt.  
14 That type information.

15                 The one in Manning still had the  
16 Jackson Hewitt sign up. It was a round canopy that  
17 said Jackson Hewitt Tax Service. That was still  
18 up.

19                 If you called Richard's number that was  
20 supposed to be Customers First it would say, thank  
21 you for calling Jackson Hewitt, and press one or  
22 two or what -- it's documented over there -- and  
23 talked about Jackson Hewitt tax school when you  
24 called Customers First.

25           Q.     Which location was this number for?

Cynthia B. Davis

1 in Sumter and she's in trouble with Jackson Hewitt  
2 and they've taken it from her.

3 Q. When you said you spoke with customers  
4 in that last answer, customers of this location in  
5 Shaw?

6 A. No. They left the Shaw office and came  
7 to my office when they discovered it's not a  
8 Jackson Hewitt.

9 Q. So customers had gone to the Shaw  
10 office, at least from what you could determine, and  
11 then realized it wasn't a Jackson Hewitt and then  
12 came to your office that you continue to operate  
13 today; is that correct?

14 A. That's correct.

15 Q. This is during the tax season 2011?

16 A. Correct.

17 Q. And then relayed this information to  
18 you about what was said to them?

19 A. Correct.

20 Q. Did you have any direct discussions  
21 with employees of a Customers First location in  
22 which an employee of a Customers First location  
23 said, we are affiliated with Jackson Hewitt?

24 A. Yes.

25 Q. Tell me about those discussions.

Cynthia B. Davis

1           A.     His name is Michael Afforte. Went into  
2 Shaw -- went into the Shaw office and I said, is  
3 this Jackson Hewitt? He said, no, we're affiliated  
4 with Jackson Hewitt. I said, do you know where a  
5 Jackson Hewitt is? No, I don't know where a  
6 Jackson Hewitt is. We -- I'm trying to get the  
7 wording exactly right. I don't know that there is  
8 any more Jackson Hewitts. We're affiliated -- we  
9 took over this office that was Jackson Hewitt, but  
10 we have all of Jackson Hewitt's records and if you  
11 would just give me your name I can find your folder  
12 or your tax return information. And I proceeded to  
13 give him my name. And he went in the back room.  
14 Then when he went into the back room there was all  
15 these Jackson Hewitt folders that were mine when I  
16 owned that office and I just picked them up with my  
17 daughter and left.

18           Q.     Could you see this from where you were  
19 standing or did you follow him in the back room?

20           A.     I followed him. Because at Bi-Lo the  
21 girl told me where they were. When we encountered  
22 her as an employee she told me that they had worked  
23 all summer scanning in that information in that  
24 office and she told me where they were kept.

25           Q.     So you'd gone to Bi-Lo first; is that

Cynthia B. Davis

1 correct?

2 A. Correct.

3 Q. Was that a Customers First location?

4 A. Correct.

5 Q. Was it branded as a Customers First  
6 location?

7 A. Correct.

8 Q. Did it have any Jackson Hewitt signs?

9 A. None.

10 Q. Did the girl you talked with at the  
11 Bi-Lo say that there was any affiliation between  
12 Customers First?

13 A. She said that it was affiliated with  
14 Jackson Hewitt and that there used to be a woman  
15 that had -- same thing I just said, that she's on  
16 bad terms and they've taken it from her, but they  
17 have all Jackson Hewitt's information.

18 And I gave her my name and I gave her  
19 my social because I knew she couldn't pull it up  
20 because I hadn't done a return. Then she could not  
21 figure out why it didn't come up because they had  
22 scanned all this stuff. And then when I told her  
23 who I was, out of shock she started just spilling  
24 the beans.

25 Q. Did you originally go in the Bi-Lo and

Cynthia B. Davis

1 pretend to be a potential customer?

2 A. Yes.

3 Q. Why did do you that?

4 A. Because I wanted to know if what my  
5 customers were telling me was true, and it was.

6 Q. Now, when you said that this employee  
7 of the Customers First at the Bi-Lo started  
8 spilling the beans, can you describe specifically  
9 what she said at that point?

10 A. Yes. She said that that's what she was  
11 told to tell people. There is not a Jackson  
12 Hewitt. They are -- they are the new Jackson  
13 Hewitt. They were affiliated with it, but there is  
14 no Jackson Hewitt. And it's owned by Kristi and  
15 Scott Barnes, and they spent all summer scanning in  
16 Jackson Hewitt's folders, and that's why she  
17 thought she could pull my name up.

18 Q. Did she say anything else during this  
19 conversation you had with the employee at the  
20 Bi-Lo?

21 A. I introduced myself and told her who I  
22 was and I was, I guess -- I am the only woman that  
23 owns a franchise in Sumter and I was in good  
24 standing with Jackson Hewitt. Richard wasn't.

25 Q. Did she say anything in response to



Cynthia B. Davis

1 say my daughter, Stephanie, did her tax return.  
2 And that is just speculating because I don't have  
3 the records here to double-check.

4 Q. Is it your understanding that this  
5 unnamed lady who had gone to the Manning Customers  
6 First location ultimately didn't file her taxes  
7 with Customers First because Customers First could  
8 not offer her a refund anticipation loan and that's  
9 why she came to your Jackson Hewitt location?

10 MR. LABUKAS: Objection. Calls for  
11 speculation.

12 BY MR. PARKS:

13 Q. I'm asking for your understanding. You  
14 can answer.

15 A. No. I think she came because she  
16 wanted her taxes done at Jackson Hewitt and not  
17 Customers First. It's a well-known name.

18 Q. And Viola Noel, who you mentioned in  
19 the beginning part of the e-mail we've been looking  
20 at, she became a customer of your Jackson Hewitt  
21 location for tax season 2011?

22 A. I believe she was already my customer  
23 prior to selling it to Richard. I think Richard  
24 had her when he had that office as Jackson Hewitt  
25 and then she had disappointment that it wasn't a

Cynthia B. Davis

1 Jackson Hewitt.

2 Q. And so she didn't use their services in  
3 tax season 2011?

4 A. I don't know if I did her return. I  
5 really don't.

6 Q. Now, in your e-mail you say that she --  
7 that this Viola Noel spoke to Customers First that  
8 is in Sumter on the phone. Do you know any more  
9 about Viola Noel's interactions with Customers  
10 First other than that she spoke with Customers  
11 First on the phone?

12 A. No. I don't remember. I do not  
13 remember. I believe I did her taxes as well if she  
14 came in.

15 Q. Now, the next document in the group of  
16 documents that's been collectively marked as Davis  
17 Exhibit 2 is a document that appears to -- is an  
18 e-mail to you from you to Meghan Harrison that  
19 appears to contain a declaration by you and then  
20 there's some imbedded e-mails within it; is that  
21 accurate?

22 A. Correct.

23 Q. There appears to be an imbedded e-mail,  
24 but at the same time the declaration appears to go  
25 on to Page 2 of 2 and then on to Page 1 of 1 and